

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3089  
Administrative Law Judge Division  
June 6, 2002

**R E S O L U T I O N**

RESOLUTION ALJ 176-3089. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

## **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

## **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 6, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director

LORETTA M. LYNCH  
President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3089 (6/6/02)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A02-05-031</b> SAN DIEGO GAS & ELECTRIC COMPANY, For authority (i) to increase its authorized return on common equity, (ii) to adjust its authorized embedded costs of debt and preferred stock, (iii) to increase its overall rate of return, and (iv) to revise its electric distribution and gas rates accordingly, and for related substantive and procedural relief.	Quasi-legislative	Ratesetting	YES
<b>A02-05-033</b> SUBURBAN WATER SYSTEMS, For authority to increase rates in the year 2003 by \$9,919,002 or 27.2% above the revenues generated by present rates; in the year 2004 by \$1,447,692 or 3.1% above the revenues generated by the rates proposed for 2003; and in the year 2005 by \$1,597,008 or 3.3% above the 2004 requirements. (N02-05-024).	Ratesetting	Ratesetting	YES
<b>A02-05-034</b> GARY WAYNE SHURTLIFF, for a Household Goods Carrier Permit	Adjudicatory	Ratesetting	YES
<b>A02-05-037</b> BROADVIEW NP ACQUISITION CORP., dba BROADVIEW NET PLUS, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-038</b> ONELINK COMMUNICATIONS, INC., dba FIRSTLINK COMMUNICATIONS, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-039</b> WDT WORLD DISCOUNT TELECOMMUNICATIONS CO., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-040</b> GLOBAL INTERNETWORKING, INC., dba VIRGINIA GLOBAL INTERNETWORKING, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3089 (6/6/02)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A02-05-041</b> SONUSS COMMUNICATION SYSTEMS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-043</b> CITY OF RIVERSIDE, for an Order Authorizing it to Construct a Grade Separation at the Jurupa Avenue Railroad Crossing and Closure of Mountain View Avenue at the Railroad Crossing; the concerned tracks are the property of the Union Pacific Railroad Company located in the City and County of Riverside, State of California	Ratesetting	Ratesetting	NO
<b>A02-05-044</b> CALLTOWER, INC., for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resale Local Exchange Services in Pacific Bell, Verizon (formerly GTE California, Inc.), Citizens Telephone Company and Roseville Telephone Company and Interexchange Services Statewide	Ratesetting	Ratesetting	NO
<b>A02-05-045</b> CITY OF CATHEDRAL CITY, for an Order under General Order No.88-A for authorization to Widen the existing Date Palm Drive Overhead which crosses over tracks of the Union Pacific Railroad at milepost 594.45	Ratesetting	Ratesetting	NO
<b>A02-05-047</b> ALLIANCE PAYPHONE, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-048</b> NATIONAL ACCESS LONG DISTANCE, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-049</b> BALBOA ISLAND FERRY, INC., (VCC-2), for Authorization under Section 454, Public Utilities Code, to Publish Tariff Provisions resulting in Increase	Ratesetting	Ratesetting	NO

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Resolution ALJ 176-3089 (6/6/02)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A02-05-050</b> ALAMEDA CORRIDOR - EAST CONSTRUCTION AUTHORITY, for an Order authorizing elimination of an existing at-grade crossing through construction of a grade separated crossing (roadway underpass) at Reservoir Street, under Union Pacific Railroad Company's adjacent Los Angeles Subdivision and Alhambra Subdivision main lines, in the City of Pomona, County of Los Angeles.	Ratesetting	Ratesetting	NO
<b>A02-05-051</b> HI-TECH GATEWAY, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-052</b> US LEC COMMUNICATIONS INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-053</b> LINEA LATINA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-054</b> CITY OF WEST SACRAMENTO, for an Order authorizing construction of a crossing at grade between Lake Washington Boulevard and the tracks of the Yolo Shortline Railroad Company	Ratesetting	Ratesetting	NO
<b>A02-05-055</b> CYPRESS COMMUNICATIONS OPERATING COMPANY, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-05-056</b> CYPRESS COMMUNICATIONS OPERATING COMPANY, INC., for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Telecommunications Services within California	Ratesetting	Ratesetting	NO
<b>A02-05-057</b> SIPCO LIMITED, U.S. TELEPACIFIC CORP., Joint Application for Approval of Acquisition and Indirect Control over U.S. TelePacific Corp. by SIPCO Limited	Ratesetting	Ratesetting	NO